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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 10/2001

New Delhi, this the 14th day of March, 2002~

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Shri R.P.Gupta
Executive Engineer
Office of Chief Engineer (RCP)~
New Delhi.

R/o House No.755, Sector 21-A, Faridabad.

(By Advocate Shri U.S.Bisht)

...Applicant~

V E R S U S

UNION OF INDIA : THROUGH

1. Secretary
Ministry of Defence
South Block, New Delhi - 110 011.
2. Engineer-in-Chief's Branch
Kashmir House, D.H.Q.P.O.
Rajaji Marg
New Delhi - 110 011.
3. Chief Engineer (RCP)
RCPO, Safdarjung Road
Racecourse, New Delhi - 110 003.

(By Advocate Ms. Meenu Mainee)

...Respondents

O R D E R

By Hon'ble Shri Govindan S.Tampi,

The applicant in this case is aggrieved at the action of the respondents in stopping payment of additional emoluments to him for performing extra duties, after initial period of three months.

2. Heard Shri U.S.Bisht and Ms. Meenu Mainee, learned counsel for the applicant and the respondents respectively.
3. The applicant Shri R.P.Gupta (now retired), who was working as Executive Engineer in the respondents organisation with the rank of Staff Officer Gr.II; was on 8-5-1998 directed by the Chief Engineer (RCP) New Delhi to perform the

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duties of SW in addition to his own duties w.e.f. 21-5-1998. This additional assignment involved different kinds of important duties like drafting of tenders framing contract specifications, market rate analysis, attending to Court cases etc. which were different from his normal work as an Executive Engineer attending to planning and execution of civil works, budgetary controls, establishment proposals etc. In terms of instructions, when a Govt. servant is formally deputed to hold charge of another post which is not in the same cadre/line of promotion, is entitled for getting 10 % of the pay of the additional post, if the said charge is for a period exceeding 39 days. Accordingly, the applicant was paid the additional emoluments for a period of three months which was stopped thereafter. Though he continued to perform the additional duties of surveyor of work. His engagement as Surveyor Of Works was on exigencies of service and keeping in mind, his competence to discharge the above functions. In fact, the Unit where he was working had also approached the Engineer in Chief's Branch for continuing the payment of additional emoluments to the applicant. The same, however, did not bear any result and the respondents on 15-5-2000 even superseded the earlier letter of 8-5-1998. Hence this OA.

4. In the grounds, raised in the OA, duly reiterated by Shri Bisht, learned counsel, it is pointed out that as the applicant was performing additional duties in the ex-cadre post of Surveyor of Works, which was not in the same line/promotion, on being

specifically directed by the Chief Engineer, he was entitled for payment of additional emoluments in terms of FR 49 (iii). After having been made to discharge the onerous duties and responsibilities of Surveyor of works in addition to his own duties, he has been wrongfully denied the emoluments for such duties. It was for the respondents to have taken up the matter with the concerned authorities to ensure that the additional emoluments was continued as long as he was performing the additional duties, which he did till his date of retirement on superannuation. Having specifically directed the applicant to perform the additional duties, the respondents are estopped from denying him the remuneration for such duties, which was provided under the Rules, prays Shri Bisht, learned counsel.

5. In the reply, filed on behalf of the respondents, duly reiterated during the oral submissions by Ms. Meenu Mainee, it is submitted that the post of Executive Engineer/Staff Officer Gr.II was only an equivalent post to that of Surveyor of Works and performance of the duties attached to the latter, does not entail any officiating arrangement, but only a local and stop gap arrangement ordered in exigencies of service. The duties so ordered to be performed were of routine nature and the applicant had been directed to do so only as stop gap arrangement. The respondents also point out that the work load attached to the said post did not add much to the work load of the post of the Executive Engineer, which the applicant was otherwise holding. Infact, they have shown with

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reference to all items of work which the Surveyor of Works have to attend, that only routine monitoring was expected from the applicant. Still for the first three months, the applicant was given additional emoluments amounting to the 10 % of the pay of the additional post in terms of FR 49 (iii). However, in terms of proviso to the said Rule, concurrence of the Ministry of Finance would have to be obtained if such payment of additional emoluments exceeded three months. The respondents had in fact taken up the matter with the Ministry of Defence for moving the Ministry of Finance in the Matter, but the same was not agreed to. Hence the cancellation of the original order dated 8-5-1998. In view of the fact that the applicant was not holding a regular post, to which he was formally appointed, his request for continued payment of additional emoluments beyond the period of three months was incorrect and had, therefore, been legally refused by the respondents. The OA, therefore, does not merit any consideration in law, according to Ms. Meenu Mainee, learned counsel for the respondents.

6. We have carefully considered the matter. The applicant in this case, an Executive Engineer working in the grade of Staff Office Gr.II, is seeking payment of additional emoluments for the job of Surveyor of Works, which he had been performing in addition to his own duties, as according to him, he was holding a charge which was not in the same line as his regular charge and he was entitled for additional payment in terms of

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FR 49 (iii). In this context, it is relevant to refer to the said Sub-Rule, which is reproduced as below :-

"where a Government servant is formally appointed to hold (charge of another post) or posts which is or are not in the same office, or which, though in the same office, is or are not in the same cadre/line of promotion, he shall be allowed the pay of the higher post (or of the higher post if he holds charge of more than two posts) in addition to ten per cent of the presumptive pay of the additional post or posts, if the additional charge is held for a period exceeding 39 days but not exceeding 3 months :

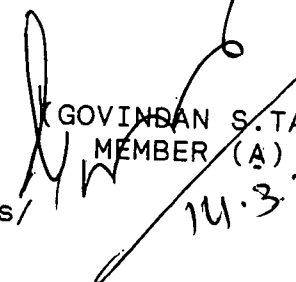
Provided that if in any particular case, it is considered necessary that the Government servant should hold charge of (another post) or posts for a period exceeding 3 months, the concurrence of the Ministry of Finance shall be obtained for the payment of the additional pay beyond the period of three months ; "

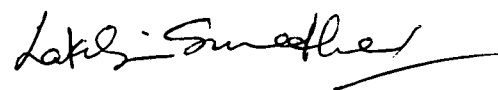
7. Evidently, therefore, a Govt. servant formally posted to hold full additional charge of another post, which is not in the same cadre/line of promotion would be entitled for getting additional emoluments to the tune of 10 % of the pay of the additional post for a period of three months, which would be continue after the said period with the concurrence of the Ministry of Finance. The specific expressions to be considered are formal appointment and concurrence of the Ministry of Finance. Both these requirements are not satisfied in the case of the applicant. It is seen that the order dated 8-5-1998 (which has since been superseded on 15-5-2000) directs that "Shri R.P.Gupta, EE S02 will perform the duties of SW in addition to his own duties w.e.f. 21 May, 1998". This clearly was a local stop gap



arrangement, ordered to meet the exigencies of service and is not a formal appointment to hold the charge on a higher or a different post, warranting payment of any additional emoluments. The applicant infact need not have been paid any additional emoluments at all, in this case. Still the respondents have done it for three months and moved the Ministry of Finance through Ministry of Defence for continuation of the above payment, which has not been found favour with the latter, and correctly so in terms of proviso to FR 49 (iii). The respondents' action is proper and legal and cannot be assailed.

8. In the above view of the matter, the OA fails and is accordingly dismissed. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)
/vks/
14.3.2002


(SMT. LAKSHMI SWAMINATHAN)
VICE-CHAIRMAN (J)